

REMARKS

Claims 1-32 are presently pending in the case. Claims 1, 5, 10, 18, 20, 22 and 26 have been amended. Claims 31 and 32 have been added. Support for the amendments and new claims can be found throughout the specification and claims as originally filed. For example, see page 8 lines 6-11. Reconsideration of the present case in view of the amendments and remarks herein is requested.

Claim rejections under 35 USC §102

The Examiner rejected claims 1-21 under 35 USC §102(b) as being anticipated by US Patent 3,636,949 to Kropp (hereinafter Kropp). The rejection is traversed.

Kropp does not anticipate independent claim 1, for example. For a rejection under 35 USC §102 to be proper, the reference relied upon must disclose each and every element of the claimed invention. Non-disclosure of a single element, feature or limitation of the claim negates anticipation. Claim 1 is to an aerosolization device comprising, inter alia, a housing, a container, and a metering valve which is moveable into the container to an actuated position when a user applies a force to the container to cause the container to move within the housing. Kropp does not disclose a metering valve that is movable into a container when a user applied a force to the container. In addition, Kropp does not disclose a container that moves within a housing. Since Kropp does not disclose all the features claimed, it does not anticipate claim 1.

Applicant requests withdrawal of the rejection of claim 1 under 35 U.S.C. §102(b). In addition, Applicant requests withdrawal of claims 2-4 which depend from claim 1 and are not anticipated by Kropp for at least the same reasons as claim 1.

Independent claim 5 is also not anticipated by Kropp. Claim 5 is to an aerosolization device comprising, inter alia, a housing, a container, and a metering valve which is moveable into the container to an actuated position when a user applies

a force to the container to cause the container to move within the housing. Kropp does not disclose these features. Accordingly, Kropp does not anticipate claim 5.

Applicant requests withdrawal of the rejection of claim 5 under 35 U.S.C. §102(b). In addition, Applicant requests withdrawal of claims 6-9 which depend from claim 5 and are not anticipated by Kropp for at least the same reasons as claim 5.

In addition, Kropp does not anticipate independent claim 10. Claim 10 is to an aerosolization device comprising, inter alia, a housing, a container, and a metering valve which is moveable into the container to an actuated position when a user applies a force to the container to cause the container to move within the housing. Kropp does not disclose a device as set forth in claim 10. Kropp does not disclose a housing, a container, and a metering valve which is moveable into the container to an actuated position when a user applies a force to the container to cause the container to move within the housing. Accordingly, Kropp does not anticipate claim 10.

Applicant requests withdrawal of the rejection of claim 10 under 35 U.S.C. §102(b). In addition, Applicant requests withdrawal of claims 11-17 which depend from claim 10 and are not anticipated by Kropp for at least the same reasons as claim 10.

Furthermore, independent claim 18 is not anticipated by Kropp. Claim 18 is to an aerosolization device comprising, inter alia, a housing, a container, and a metering valve which is moveable into the container to an actuated position when a user applies a force to the container to cause the container to move within the housing. Kropp does not disclose that which is claimed in claim 18. Therefore, Kropp does not anticipate the claim.

Applicant requests withdrawal of the rejection of claim 18 under 35 U.S.C. §102(b). In addition, Applicant requests withdrawal of claim 19 which depends from claim 18 and is not anticipated by Kropp for at least the same reasons as claim 18.

Kropp does not anticipate independent claim 20, either. Claim 20 is to an aerosolization device comprising, inter alia, a housing, a container, and a metering valve which is moveable into the container to an actuated position when a user applies a force to the container to cause the container to move within the housing. Kropp does not disclose these features and does not anticipate claim 20.

Applicant requests withdrawal of the rejection of claim 20 under 35 U.S.C. §102(b). In addition, Applicant requests withdrawal of claim 21 which depends from claim 20 and is not anticipated by Kropp for at least the same reasons as claim 20.

Claim rejections under 35 USC 103(a)

The Examiner rejected claims 22-30 under 35 USC §103(a) as being unpatentable over Kropp. The rejection is traversed.

Kropp does not render independent claim 22, for example, unpatentable. Claim 22 is to a method of controlling the operation of an aerosolization device which comprises a container and a metering valve moveable into the container to an actuated position when a user applies a force to the container to cause the container to move. Kropp does not disclose the application of a force by a user to move a metering valve to an actuated position. In addition, Kropp does not disclose movement of a container. Therefore, Kropp lacks positively recited features set forth in claim 22. Therefore, the Examiner has failed to establish a prima facie case under 35 U.S.C. §103(a) against claim 22.

Furthermore, one of ordinary skill in the art would not have found it obvious to modify Kropp in a manner that would result in the invention of claim 22. Kropp teaches away from any such modification. Kropp discloses a breath-actuated device and teaches the advantages of breath-actuation over user force actuation (see column 1 lines 15-19, column 1 lines 35-42). Thus, one of ordinary skill in the art would not have

been motivated to modify Kropp to be actuated by a user force. For this additional reason, Kropp does not render claim 22 unpatentable.

Applicant requests withdrawal of the rejection of claim 22 under 35 U.S.C. §103(a). In addition, Applicant requests withdrawal of claims 23-25 which depend from claim 22 and are not rendered unpatentable by Kropp for at least the same reasons as claim 22.

Kropp also fails to render independent claim 26 unpatentable under 35 U.S.C. 103(a). Claim 26 is to a method of controlling the operation of an aerosolization device which comprises a container and a metering valve moveable into the container to an actuated position when a user applies a force to the container to cause the container to move. Kropp does not disclose, teach or suggest that which is claimed, as discussed above. Thus, the Examiner has failed to establish a prima facie case under 35 U.S.C. §103(a). In addition, Kropp teaches away from the invention of claim 26, and one of ordinary skill in the art would accordingly not have been motivated to modify Kropp in a manner that would arrive at the invention set forth in claim 26.

Applicant requests withdrawal of the rejection of claim 26 under 35 U.S.C. §103(a). In addition, Applicant requests withdrawal of claims 27-30 which depend from claim 26 and are not rendered unpatentable by Kropp for at least the same reasons as claim 26.

Conclusion

The claims are allowable for the reasons given above. Thus, the Examiner is respectfully requested to reconsider the present rejections and allow the presently pending claims. Should the Examiner have any questions, the Examiner is requested to call the undersigned at the number given below.

Respectfully submitted,

JANAH & ASSOCIATES

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By: _____



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